

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH W. TUNCH,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

C16-5173-TSZ-BAT

ORDER

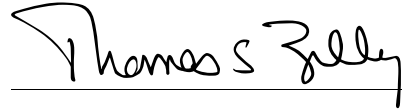
The Court, having reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge, docket no. 16, to which no objection was timely filed, does hereby find and **ORDER**:

- 1) The Court **ADOPTS** the Report and Recommendation.
- 2) The Commissioner's decision is **REVERSED** and the case is **REMANDED** to the Social Security Administration for further proceedings consistent with the Report and Recommendation.¹

¹ The Report and Recommendation indicates that the Administrative Law Judge ("ALJ") erred in failing to explain why the opinion of Dwight Randolph, LMHC, which was based on objective findings and not purely on plaintiff's subjective complaints, was disregarded. The ALJ made clear, however, that the reason he gave "little weight" to Randolph's assessment, Ex. 27F, was because he believed the evaluation pertained to the period predating the termination of plaintiff's benefits on December 13, 2012. *See* AR 27. In fact, Randolph's report was dated May 20, 2014, and indicated that plaintiff had been most recently examined on April 18, 2014. AR 1015, 1022. Thus, the ALJ's error was not in failing to provide a basis for rejecting Randolph's opinion, but in offering a ground that was not supported by the evidence.

1 3) The Clerk is directed to send copies of this Order to the parties and to
2 Magistrate Judge Brian A. Tsuchida.

3 DATED this 7th day of September, 2016.

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6 Thomas S. Zilly
7 United States District Judge
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